

**REMARKS**

The final Office action mailed on 25 July 2003 (Paper No. 12) has been carefully considered.

**Election/Restriction**

The Examiner maintained imposition of the restriction requirement and claims 1-23 and 28-31 remain withdrawn from further consideration under 37 C.F.R. § 1.142(b). Applicant incorporates his arguments made in response to the Office action mailed on 30 December 2002 (Paper No. 8). Applicant repeats that the election was made with traverse. Applicant laid out an array of reasons why the restriction and election of species was improper. Applicant directly made arguments concerning the restriction requirement. These arguments not being considered by the Examiner, Applicant has therefore no choice but to file a Petition under 35 U.S.C. § 1.144 to petition the Commissioner to reconsider the traverse submitted by Applicant.

Applicant has previously submitted to the Examiner that the Examiner must show that the inventions are independent or distinct and that they are a serious burden on the Examiner. Applicant then submitted that the Examiner has to show the burden; for example, that different embodiments are in different classes. In the current Office action that we are responding to, the Examiner in response to Applicant's arguments states that because claim 15 recites a top shelf and claim 28 recites wheels, the Examiner must conduct a search in other classes and/or subclasses; for example, 190/18A for wheels and class 220/554 for

horizontal partitions. The Examiner stated that he had to go to the other classes in order to fully consider the patentability of these claims. Applicant submits that there may be several and numerous elements in this invention. Nonetheless, we submit that a tremendous amount of burden is not in the cards because looking in classes is normally done in examination. Therefore, the restriction is again traversed and a Petition to the Commissioner under 35 U.S.C. §1.144 is also being submitted.

### Drawings

The Examiner objected to the drawings. In his opinion, they did not show every feature of the invention specified in the claims. For example, the Examiner mentioned the width of the bottom portion of the back wall being greater than width of the top portion of the back wall in claim 26. Applicant responds that regarding Figure 8, we can see where the top portion of the back wall would be smaller than the bottom portion of the back wall by virtue of the sides which comes at an angle to the back wall 724 at the bottom 722 making it wider at the bottom. One can see that the bottom here is wider than at the top. So this feature Applicant submits is shown, specifically in Figure 8. With respect to the Examiner's comment of the hanging of hangers in claim 32 where the first unit capable of hanging on the back wall and accommodating the hanging of garments in claim 38 the "Davis" connecting the top of the back of the member and the bottom member in claim 39 must be shown. With regard to the Examiner's statement that the hanging of hangers in claim 32 must be shown, Applicant submits that in Figure 11 the feature is shown and there is an item 756 which is

a 1 inch webbing which is provided with enough slack to allow hangers to hang for jerseys or other clothes (specification, page 19, lines 5-6). As for the Examiner's statement that the first unit capable of hanging on the back wall and accommodating the hanging of garments in claim 38 is not shown, Applicant submits that in Figure 11 the clasp strap 758 and the clasp 754 and clasp strap 752 are provided for hanging jerseys or street clothes. These units are located on the back wall and do accommodate the hanging garments as claimed in claim 38.

With respect to the comments by the Examiner that "the Davis connected the top the back member and the bottom member in claim 39 must be shown." Applicant submits that, referring to Figures 17 and 19 show the back member selectively connected and disconnected to the top of said back member, to the side and said bottom member by folding said back member downwards toward the bottom member to close and to open the back member upwards. This shows the connections of the back member and the bottom member. At this point Applicant submits that we do not know what the Examiner is referring to when he mentioned Davis in paragraph 2 on page 3 of the Office action. Based upon the above submissions, Applicant requests that the requirements for drawing corrections are not necessary and that the items, reference numerals and elements mentioned by the Examiner are shown in the drawings of the present application.

**Specification**

With regard to the Examiner's statement that the following terms have no antecedent basis in the specification. First, referring to: "the first extended portion" of claim 26. The specification mentions the side wall 724, on page 18, which extends from each side of the bottom portion 782 of the back wall, and this is what is referred to as a first and second extended portions. With respect to the "bottom portion of the back wall", this is mentioned on page 18 of the specification as reference numeral element 782 which is called the bottom portion of the back wall 780 and bottom portion 782. In claim 24 the Examiner has stated that there is no antecedent basis for the reference numeral element "the top portion of the back wall". Applicant submits that in claim 24 the phrase "a top side of said back wall" refers to the area at the top of the back where a first unit is attached for hanging the back wall as shown in Figures 8 and 9 where it shows the top portion of the back pack in the area of reference elements 713, 714 and 814. With respect to the first unit in claim 24, a second unit in claim 32, a bottom portion in claim 35, all mentioned by the Examiner as having no antecedent basis in the specification. Applicant submits that in Figures 11, 12 and 13, reference numerals 756, 752, and 758, 754 refer to the units which are used for holding hangers which are referred to in the specification. Applicant submits that the first unit in claim 24, a second unit claim 32, and the bottom portion in claim 35 are the same elements as claim 1 refers to when it refers to a first unit, a second unit and the bottom portion. Additionally, with regard to a bottom portion of claim 35, claim 35 states that the bottom portion is formed from a bottom of said back wall and a bottom portion connecting between

a bottom of said right wall and the left wall. These are the elements shown in Figures 8 and 9, and provide proper antecedent basis for the claimed elements. Therefore, Applicant submits that the specification adequately supports the claims and the allowance of same is respectfully requested. .

**Claim Rejections under 35 U.S.C. § 112**

The Examiner has stated that claims 24-27, 32-35 and 37-44 are rejected under the second paragraph of 35 U.S.C. § 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The Examiner goes on in claim 32 "it is unclear what comprises the second unit in claim 32." Also, the Examiner states that in claim 33, the phrase "the directions" has no antecedent basis. Furthermore, the Examiner says the claim is confusing and as much of the elected species show the compartment facing only one direction. The Examiner states that it is unclear what portion of the compartments is being referred to, or what directions are meant by the recitation. In regard to claim 32, wherein it is stated that it is unclear what comprises the second unit in claim 32, Applicant submits that the phrase is the second unit and refers to the same element that claim 1 is referring to. With regard to the statement that the directions in claim 33 wherein the Examiner states that it is confusing and unclear what portion of the compartments is being referred to and what directions are meant by in the recitation. Claim 33 basically says that depending how the bag is folded the compartments are going to face one of the directions inside or outside of the bag depending on how it is

folded, and since the most of the elements are made of material that is flexible, we feel that it is clear on this point.

Applicant submits that the directions which are referred to in the recitation are specified on page 13 of the specification at lines 10-19 where it refers to the various positions of the compartments. For example, on line 11 it says a mesh netted strip 452 is connected from a portion of the left side wall 444 to a portion of the right side wall 446 as a sample of the directions. The Examiner has pointed out that in claim 38, the phrase "a first unit" is a double recitation of the same element in claim 37. Applicant submits that in claim 38 we are claiming that the first unit accommodates the hanging of garments along a length of said back wall and we are not specific as to the plane, but in claim 37, we are more specifically saying that the first unit is capable of hanging said back wall in the single plane, like a vertical back portion of a locker.

Applicant submits that in claim 24, the fastening unit securing the two ends of the back wall occurs when the bag is folded. In claim 35, Applicant is claiming a bottom portion formed from a bottom of the back wall and actually the bottom portion connects between the bottom of said right wall and said left wall. This is just a different claim and Applicant submits that there is nothing confusing about these recitations.

With respect to the Examiner's assertion that the pack in Figure 10 is the same as Figure 8 and is also confusing, and the Examiner goes on that it is noted that there is a bottom portion in Figure 10 with the zipper terminates at point 738. The Examiner is confused that the portion 722 cannot be the bottom portion of the back pack and that the

zipper would have to terminate on the back edge of portion 722 and the back wall. Applicant submits that reference numeral element 722 is in fact the bottom portion of the back pack and that the Examiner's assertion that the zipper would terminate on the back edge of portion 722 and the back wall is unclear as Figure 10 shows that the zipper 738 does terminate at the bottom of the bag when it is folded and Applicant further submits that this is not confusing.

With respect to the Examiner's statement regarding claim 26 that it is unclear where the first and second extended portions as claimed are, Applicant submits that in Figure 8 as previously explained above, one can see that the reference numeral element 724 and its corresponding other side of the bag are in fact wider than the top portion of the bag. The fact that in Figure 10, when it is folded, the wider portions are folded in is what happens when the bag is zippered. Applicant submits this is not confusing.

#### **Claim Rejection Under 37 C.F.R. § 103**

The Examiner has rejected claims 24, 25, 33, 35, 39, 40 and 44 under 35 U.S.C. § 103(a) as being unpatentable over DeChant in view of Scot. DeChant teaches a backwall, a first unit 70, a plurality of compartment at 76 as shown in Figure 12, a fastening unit being the Davis. The Examiner claims that DeChant meets all claimed limitations except for the pair of straps and Scott teaches that it is known in the art to provide a pair of shoulder straps JJ. The Examiner goes on to state that it would have been obvious for one of ordinary skill in the art to provide the straps in DeChant as taught by Scott to provide an alternative method

to carry the bag. Also regarding claim 35, the Examiner noted that there is a bottom formed from the bottom the back wall as claimed. Applicant submits that DeChant does not teach folding of said back member downwards toward the bottom member to close said backpack and opening to unfold said back member upwards as we are doing in claim 44. Furthermore, with respect to Scott teaching that it is known in the art to provide a pair of shoulder straps, Scott does not show or teach a pair of shoulder straps. Scott includes a long strap which could be used for carrying a hand trunk or hat box of Scott in a longitudinal axis parallel to the ground. Scott does not teach a pair of shoulder straps as Applicant does. Applicant submits that claims 24, 25, 33, 35, 39, 40 and 44 are patentable over DeChant and Scott. Scott does not teach a pair of shoulder straps nor does he provide a single strap with the miniature golf bag in case of DeChant.

With respect to the Examiner's rejection of claims 26, 27, 34, 37, 41 and 42 under 35 U.S.C. §103(a) as being unpatentable over the DeChant rejection as set forth above in paragraph 5, and further in view of Briggs *et al.*, the Examiner has stated that Briggs teaches that it is known in the art to provide first and second extended portions, and therefore it would have been obvious for one of ordinary skill in the art to provide first and second extended portions in the DeChant rejection as taught by Briggs to keep the contents together. In this regard, Applicant submits that the Briggs does not teach as the Examiner suggests of the provision of first and second extended portions 18. In Briggs, the reference numeral elements 18 are actually straps. Therefore, they are not extension portions as Applicant has. Accordingly, it cannot not have been obvious for someone to utilize Briggs in conjunction



with DeChant to come up with Applicant's invention nor is there motivation taught by Briggs for doing so.

In regard to the rejection of claims 32, 38 and 43, by the DeChant reference in further in view of Davis *et al.*, the Examiner has stated that Davis teaches that it is known in the art to provide a second unit 52 to accommodate the hanging of clothes. Applicant submits that Davis teaches a garment bag that folds. Although there are provisions for hanging hangers at the upper portion of the bag in Davis. There is no means or motivation shown for this type of arrangement to be used in a bag which basically rolls up as Applicants' does. Therefore, Applicant submits that claims 32, 38 and 43 are patentable over DeChant in view of Davis.

With respect to the rejection of claims 35 and 37 under 35 U.S.C. §103(a) as being unpatentable over Tong in view of Fournier, and further in view of Scott, the Examiner has stated that Tong teaches a bag having a back wall. A first unit and a plurality of components and Tong meets all of the claim limitations except for the compartments of netted material. The Examiner states that Fournier teaches that it is known in the art to provide netted compartments. The Examiner has stated that it would have been obvious to one of ordinary skill in the art to provide netted compartments in Tong as taught by Fournier to allow the content to dry easily. Also, the Examiner has noted that two straps in Tong can be used to carry the bag on the back. With respect to these comments of the Examiner, Applicant submits that Fournier together with Tong are obviously teaching small utility bags. The two straps in Tong that are shown are actually a handle for a duffle bag, which come together to a form of a singular handle and this is not conducive to utilize them as a back pack. The

contents of the duffle bag in Tong would spill out if the handles were used as back straps, assuming they could fit over the shoulders, which is doubtful. It is submitted that it would be impossible to do what the Examiner suggests. Of course it is always easier to see something when someone else has just done it, namely the inventor. Therefore, utilizing the teaching of Tong would make the Applicant's invention unworkable.

In regard to paragraph 9, with respect to the rejection of claims 24, 25, 33, 35 and 37 under 35 U.S.C. § 103(a) as being unpatentable over Tong in view of Fournier, and further in view of Scott. The Examiner states that Tong teaches a bag having a back wall formed by portions, a first unit, a plurality of compartments, and that Tong meets all claimed limitations except for the compartments of netted material. The Examiner then states that Fournier teaches that it is known in the art to provide netted compartments, and therefore it would have been obvious to one of ordinary skill in the art to provide netted compartments in Tong as taught by Fournier to allow the content to dry easily. The Examiner further states that with respect to the pair of straps, it would have been obvious for one of ordinary skill in the art to provide the straps in Tong as taught by Scott to provide an alternative method to carry the bag. Applicant suggests that Scott teaches a pair of straps for carrying rolled up blankets or shawls at column 2, lines 35-40. Scott does not teach straps for backpacking the hatbox or the duffel bag of Tong or the bag of Fournier. It is submitted that up to this point in time, without the benefit of hindsight, only the Applicant was inspired to synergize his invention which these three references do not teach. It wasn't their bag. What these three

references teach is a small bag similar to a gym bag that is much more easily carried by hand or over one shoulder as shown in Scott, and the blankets are carried by the blanket straps JJ, this teaches against applicant's invention. The fact that the Examiner has noted the straps in Scott is interesting, but the Examiner failed to indicate these Straps were for attaching blanket rolls to the hatbox of Scott, which therefore teach against Applicant's invention.

With regard to paragraph 10, the rejection of claims 26, 27, 34, 38 and 43 under 35 U.S.C. §103(a) as being unpatentable over the Tong rejection as set forth above, in further view of Briggs *et al.*, the Examiner has stated that Tong meets all claimed limitations except for first and second extended portions, and Briggs teaches that it is known in the art to provide first and second extended portions 18 and therefore it would have been obvious for one of ordinary skill in the art to provide first and second extended portions in the Tong rejection as taught by Briggs to keep the contents together. Applicant submits that the Examiner's referral to Briggs's teaching of first and second extended portions 18 is invalid and misleading because in that Briggs's reference, elements 18 are straps for securing garments from shifting, and do not teach extended portions as Applicant does. Applicant objects to this type of misleading comment and lack of veracity during examination. Therefore, claims 26, 27, 34, 38 and 43 are submitted by Applicant to be allowable.

With regard to claim 33, the Examiner has stated that the compartments in Tong face a plurality of directions in the flat position and in the erected positions. Applicant submits that this is an impossibility. A compartment can only face one of the directions of the bag when folded, as Applicant claims. If a compartment can face a plurality of directions in the

positions mentioned by the Examiner at the same time, the Examiner has failed to cite references that involve multi-dimensional time/gravity warps and quantum foam, not to mention string theory and gravitrons.

In paragraph 11, the Examiner has stated that claims 32, 38 and 43 are rejected by the Tong rejection, and further in view of Davis *et al.* The Examiner stated that Tong meets all claimed limitations except for the second unit accommodating the hanging of hangers. The Examiner goes on to say that Davis teaches that it is known in the art to provide a second unit 52 and therefore, it would have been obvious to one of ordinary skill in the art to provide a second unit in Tong as taught by Davis to accommodate the hanging of clothes. Applicant submits that in regard to the paragraph 11 rejection, Davis teaches a bag which folds and does not roll up as Applicant's does. Furthermore, Tong teaches a small duffle bag without duffle straps for use of the back pack. In addition, there wouldn't be room in Tong for hangers as taught by Davis. Therefore, there is no motivation or teaching of the Applicant's invention and Applicant submits that claims 32, 38 and 43 are allowable.

In paragraph 12, the Examiner has stated that claims 39, 40 and 44 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Tong in view of Scott. The Examiner states that Tong teaches a bag having a back wall formed by portions and a plurality of compartments. The Examiner also states that Tong meets all claimed limitations except for the back straps, and therefore it would have been obvious for one of ordinary skill in the art to provide the straps in Tong as taught by Scott to provide an alternative method to carry the bag. In regard to this rejection, Applicant submits that Tong and Scott teach trunks and hat

boxes and small duffle bags. Applicant again repeats that the handles in Tong, if utilized as back straps, would spill the contents of Tong out of the duffle bag. This is against the teachings of Applicant where everything is zipped up and rolled up and back straps would not make the bag susceptible to spilling components. Additionally, Applicant again submits that Scott does not teach back-straps but teaches straps to hold blankets and/or shawls. Further, the utilization of straps on a hand-held hatbox or gym bag as the Examiner suggests might not be feasible size wise, and Applicant suggests that the Examiner ought to try to utilize the straps in Scott on a gym bag of Tong and see how He fares. It is pure speculation. For these reasons, Applicant submits that claims 39, 40 and 44 are allowable.

Applicant submits that this Amendment and Petition under 37 C.F.R. §1.144 to traverse the restriction requirement are submitted in good faith and that further, Applicant has answered all of the questions posed by the Examiner in a good faith, in a manner utilizing the best of his ability and respectfully requests an action indicating allowable subject matter in this case.

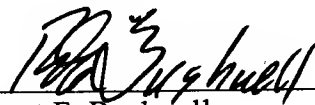
Applicant, Mr. Allbriton requests an interview with the Examiner at a convenient time, to present the invention and try to move the case forward.

Also, a proposed Affidavit of Commercial Success to be submitted at the office interview with the Examiner is attached for the Examiner's consideration.

In view of the above, it is submitted that the claims of this application are in condition for allowance, and early issuance thereof is solicited. Should any questions remain unresolved, the Examiner is requested to telephone Applicant's attorney.

A petition for a one month extension of time and an Applicant's check in the amount of \$55.00 for a **Small Entity** drawn to the order of Commissioner accompanies this Response After Final. Should the petition become lost, the Commissioner is requested to treat this paragraph as a petition for an extension of time, and should the check become lost, be deficient in payment, or should other fees be incurred, the Commissioner is authorized to charge Deposit Account No. 02-4943 of Applicant's undersigned attorney in the amount of such fees.

Respectfully submitted,



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